

POLICY # 105	SUBJECT: Bids and Contracts
EFFECTIVE DATE: 6/19/89 REVISED: 5/1/94, 5/14/91,12/31/03	PAGE 1 of 8
AUTHORIZED SIGNATURE: (Signed by Secretary Cari DeSantis on January 5, 2004)	

DEPARTMENT POLICY

I. PURPOSE

The purpose of this policy is to ensure that the Department makes effective and efficient use of State and other resources in purchasing services and organizational support services needed to fulfill its mission and goals.

This policy is intended to:

- A. establish consistent standards, processes, formats, and language to be used in the purchase of services and organizational support services;
- B. ensure equitable and reasonable competition; and
- C. establish as a standard procedure for the use of written contracts to purchase services and organizational supports.

II. APPLICABILITY

A. Use of Policy

This policy shall apply to all Department purchases of services (as defined in Section III). The Cabinet Secretary (hereinafter referred to as “the Secretary”) shall not sign any bid or contract that does not conform to the requirements of this policy.

B. Source Documents

This policy has been developed to ensure that the bid and contract process complies with applicable Federal laws and regulations, State laws (including Delaware Code, Title 29, Chapter 69) and regulations, and the State Accounting Manual.

C. Public Works

This policy is not intended to supersede bidding procedures applied to public works, which are defined in the Delaware Code (Title 29, Chapter 69, reference Public Works).

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D. Supplies and Materials

This policy is not to be applied to the purchase of supplies and materials covered by small purchase procedures promulgated by the Division of Purchasing, Department of Administrative Services. (29 Delaware Code §6980)

E. Conflicting Laws/Policies

If conflicts are found to exist, Federal or State Law or Regulations or the State Accounting Manual shall prevail over this policy. The invalidation of one section of this policy due to such a conflict shall not invalidate any other section of this policy.

III. AUTHORITY

A. Secretary as the Ultimate Authority

The Secretary retains ultimate authority and responsibility for review and approval of all Department bid and contract activities. The Secretary may delegate certain tasks and authority to the various Divisions.

B. Roles/Responsibilities of Divisions

1. Each Division is responsible for the initiation of all contracts that it will administer. The Division of Management Support Services shall carry out technical assistance, review and approval, and coordinating functions on behalf of the Secretary.
2. Only the Division of Management Support Services in consultation with the Department of Administrative Services will let construction, renovation, maintenance, janitorial, and trash removal contracts.

C. Contract Signature Authority

The Secretary, pursuant to the authority given to him/her by 29 Delaware Code Section 9005 (6), may delegate the authority to sign contracts.

1. The Secretary retains sole authority to sign contracts as indicated below:
 - a. Those contracts and contract amendments in which the total value of the contract or amended contract exceeds \$500,000.
 - b. Contracts for consulting, regardless of contract amount.
 - c. Contracts having a duration of more than two years.
 - d. Contracts initiated within a specific Division when that Division Director is acting as the Secretary's designee for the purpose of signing contracts.

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- e. Contracts with current State employees and with former State employees who have left State service in the two years prior to the contract's signature date.
 - f. Contracts with individuals who are expected to perform a full time, ongoing task similar to that of a Full-Time Equivalency (FTE) employee.
 - g. Contracts with other State agencies outside of the Department.
 - h. Contracts which deviate from the Department's standard boilerplate language in any way.
 - i. Contractual arrangements with providers which replace contracts that were discontinued due to unsatisfactory performance or cost considerations.
2. Additional Approvals

The following types of contracts will require the noted additional approvals. These approvals should be obtained, if possible, before the contract is routed.

- a. MIS services, hardware, and software: DSCYF MIS Unit and Department of Technology and Information (DTI), Dover
- b. Telecommunication equipment: DSCYF MIS Unit and Department of Technology and Information (DTI), Dover

IV. DEFINITIONS

For purposes of this policy, the terms below shall be deemed to mean the following:

- A. Budget: a systematic structured presentation of costs, usually by line item categories.
- B. Consultant: an individual with specified qualifications, experience, and skills who provides services or organizational support services to the Department on a non-employee basis, for a temporary period.
- C. Contract: a written agreement between the Department and the provider, the terms of which are contained completely within a document, which has been signed by the Contractor and the Department and which both parties intend to be legally binding on the signatories. The agreement may specify the activities, expectations, conditions, terms, standards, costs, monitoring, and other actions to be taken by both parties to the agreement.
- D. Contract Amendment: a written agreement which, when executed, changes an existing contract. The amendment specifies the changes and requires the approval of all signatories to the original contract.
- E. Contract Manager: the Department employee designated by a Division Director to have responsibility for development, implementation, monitoring, and management of a contract.

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- F. **Contract Summary Sheet:** a form completed by the Contract Manager that explains services provided and compares changes from the past to current contract year. The form is circulated in the contract folder.
- G. **Contractor:** any agency, organization, corporation, association, partnership, or individual, either for profit or not-for-profit, who agrees in writing to provide specific services or organizational supports to the Department or its clients.
- H. **Cost Reimbursable Contract:** a contract that secures services for an entire program and stipulates agreement to reimburse the full cost for service based on an agreed upon budget and supporting narrative up to an agreed upon amount. (Sometimes referred to as “Program Funded”).
- I. **Department:** as used in this policy, means the Department of Services for Children, Youth and Their Families.
- J. **Fixed Cost Contract:** a contract that delineates an agreed upon price for a specific work product or set of deliverables.
- K. **Invitation to Bid (ITB):** a public written solicitation of bids where the specifications of the product are clearly defined.
- L. **Non-Competitive Award/Purchase:** procurement or acquisition of services where no Request for Proposals or Invitation to Bid was issued; procurement through the open market.
- M. **Organizational Support Services:** ancillary activities such as training or consultation needed to augment services provided by the Department.
- N. **Public Works:** construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.
- O. **Purchase Order (PO):** an encumbrance against the accounts of the State for the purchase of a specific service or organizational support, issued by the Department and approved by the Department of Finance prior to the expenditure of funds.
- P. **Request for Letters of Interest (RFI):** a public written solicitation to determine only the field of potential respondents to deliver a needed service. An RFI may not substitute for a required competitive bid process.
- Q. **Request for Proposals (RFP):** a public written solicitation of proposals where the specifications of the product/service are clearly defined.
- R. **Requisition:** an initiating procurement action form, which includes information such as vendor, goods/services to be secured, and source of funding to finance the procurement. Upon review and approval, this may result in the issuance of a State of Delaware Purchase Order.
- S. **Services:** activities and programs procured to benefit Department clients.

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- T. Solicitation of Quotations: a request issued to potential contractors, inviting them to state their costs for providing services or organizational support services.
- U. Supplies and Materials: goods, such as office and computer supplies, commodities (food, fuel, etc.), equipment, tools, and construction materials, used in support of the operations of the Department.
- V. Training: activities designed to impart knowledge and/or skills to an individual or a group of individuals.
- W. Unit Cost Contract: a contract that secures services based on pricing and reimbursement for units of service. A unit of service can be specified by a time period (i.e., hour, day, month) or by a specific service component (i.e., physical exam, x-ray, diagnostic evaluation). Documentation of the basis for the unit cost should be available.

V. PROCEDURES FOR PROCURING SERVICES

A. General Considerations

- 1. The Department selects providers on the basis of factors including, but not limited to, quality, cost, and accessibility.
- 2. Department purchases of services and organizational support services shall be made by means of a contract. Both must have a corresponding purchase order.
- 3. Purchase orders must be consistent with the provisions of the State Accounting Manual.
- 4. In keeping with the Delaware Code (Title 29, Section 58) the competitive negotiation procedures must be applied for all contracts with state employees for \$2,000 or more.

B. Use of Contracts and Purchase Orders

- 1. A contract will generally be used when:
 - a. the service is known or estimated to cost more than \$2,500 or;
 - b. the service is being purchased from a consultant and requires more than one day of the consultant's time in any calendar year or;
 - c. training is being purchased and requires more than four days of the trainer's time in any calendar year.
- 2. All contracts must be supported by a Purchase Order (PO). The contract will be used to initiate the purchase order.
- 3. Contracts are not required in the following situations, in which only a Requisition and Purchase Order (PO) are used:

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- a. for purchases where the service is known or estimated to cost \$2,500 or less and has no complicated specifications or terms,
 - b. to establish a temporary, short-term arrangement in a situation where the health or safety of a Department client could be jeopardized by waiting for completion of regular contracting procedures,
 - c. when the service is being purchased from a consultant for a fee of \$2,500 or less for only one day of the consultant's time in a calendar year, or
 - d. when the service is being purchased from a trainer for a fee of \$2,500 or less, for four or less days of the trainer's time in a calendar year.
4. If a Division determines that an exception to the use of a contract is appropriate and necessary, Division staff shall document the reasons for the exception using the Health/Safety Waiver and Non-Competitive Award Request and obtain approval (and assistance, if needed) from the Division of Management Support Services to use an alternative.

C. Selection of Providers

1. Non-Competitive Purchases may be made for purchases less than \$50,000 selected through the open market.
2. Competitive Negotiation
 - a. For purchases through a single contract of \$50,000 and above in any state or federal fiscal year, the following procedures must be implemented and be documented:
 - (1) The Department issues a written Request for Proposals (RFP).
 - (2) The Request for Proposals is publicized to ensure public notice. At a minimum the public notice must include publication not less than once a week for two (2) consecutive weeks in a newspaper circulated in each county of the state.
 - (3) Bidders submit written proposals.
 - (4) Proposals are reviewed in a closed panel convened by the Department.
 - (5) The panel submits recommendations to a Division Director who makes the final decision on the contract award(s).
 - (6) A summary of the panel review proceedings is on file at the Department for public review.

- (7) Bidders are notified of the status of their bid within 60 days of close of bids.
 - b. The duration of a procurement award under this section shall be for a period not to exceed five (5) years or a lesser period if so stated in the RFP. At the end of the five (5) years, or a lesser period as designated in the RFP, the procurement shall again be subject to competitive negotiation procedures, unless continued procurement from the Contractor can be justified under non-competitive purchasing or non-competitive negotiation procedures.
3. Non-Competitive Negotiation
- a. May be used for purchases of \$50,000 and above when:
 - (1) the health or safety of a Department client could be jeopardized by waiting for the completion of competitive negotiation procedures (In certain instances, the health or safety concern may include both waiver of the contract and the competitive negotiation process. If the length of service/stay is expected to exceed 45 days, the service may begin without a contract, but a contract must follow the waiver.)
 - (2) there exists sufficient evidence that there is only one source for the required professional services and that no other reasonable and appropriate sources are available. Instances might include clients with unique or unusual problems or circumstances. The decision to proceed with non-competitive negotiation shall be based on a determination that the unique service cannot be furnished by another provider.
 - (a) If a competitive bid process fails to produce a successful bidder, the Department may seek out a provider on the open market and may consider the unsuccessful solicitation the basis for non-competitive acquisition for the specified service for the term of three years.
 - (3) a critical need, not necessarily impacting on client health and safety, has been determined to exist as the result of an emergency or condition that could not be reasonably foreseen or guarded against or the service cannot be obtained through normal procurement procedures. Examples might include emergency medical or psychiatric treatment or an unsuccessful competitive bid process.
 - (4) a Federal agency approves the use of a specific contractor(s) in awarding a grant.
 - b. The contracting Division Director makes the final decision on non-competitive contract awards and routes the request to DMSS for review.

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- (1) The contracting Division Director must notify the Cabinet Secretary of the intent to award a non-competitive contract prior to awarding such a contract.
- (2) Use of the non-competitive negotiation process must be documented by the contracting Division at the time the contract is entered into and annually thereafter. Such documentation must demonstrate a substantive and defensible basis for not using the competitive negotiation process.
- (3) A copy of said documentation shall be reviewed by the Division of Management Support Services to ensure compliance with this policy and be kept on file with the Division of Management Support Services in the Department's contract file.

VI. CONTRACT MONITORING

- A. At the beginning of each State Fiscal year, each Division shall establish a monitoring schedule to be implemented throughout the year to ensure that a reasonable sample of provider services is examined. In any monitoring year, the focus of said monitoring may be on varying aspects of the service or organizational support service purchased through the contract, but must ensure that both contract compliance and client outcomes are reviewed.
- B. When on-site monitoring cannot occur due to fiscal limitations, the Contract Manager must develop alternate strategies to obtain information about the operation of the contracted service.
- C. A written report of findings must be prepared for each scheduled monitoring activity and documentation must be prepared of follow-up related to any required corrective actions.